ANJALAI & ORS.

v.

RAMASAMY DORAISAMY & ANOR.

HIGH COURT MALAYA, PENANG
WAN ADNAN J
[CIVIL CASE NO. 22-314-89]
11 JUNE 1990

LAND LAW: *Tenancy - Dispute between members of family residing in same property - Life interest - Joint tenants - Whether bare licence or equity - Whether validly terminated.*

The 1st plaintiff A is the widow of D deceased, the 2nd, 3rd, 4th & 5th plaintiffs are the children of A and D. The defendants, R and K, are the half brothers of the 2nd, 3rd, 4th & 5th plaintiffs. All parties resided at the disputed property during the lifetime of D; after D's death, 1st, 2nd and 3rd plaintiffs and R & K continued to occupy the property.

On 25 August 1931 this property was transferred by R & K's grandmother to D for the term of his natural life and thereafter R & K as joint tenants in fee simple (prior to D's marriage to A). D died on 2 August 1982 and on 10 March 1986 R & K obtained the order of the Court vesting the property in R & K's joint names; this was registered on 7 July 1986 and final title under the National Land Code (NLC) has been issued to R & K.

The plaintiffs contend that R & K are holding the said property on trust for the plaintiffs as they contend that they have equitable interests in the property, that they are protected by proprietary and promissory estoppel and that have a licence coupled with equity or alternatively that they are tenants protected by the Control of Rent Act. The defendants claim that the bare licence given to the plaintiffs had been terminated and requested vacant possession of the said property.

Held:

[1] The law on tenancy or licence coupled with equity is as stated in *Inwards v. Baker* by Lord Denning; followed and affirmed by the Privy Council in *Yong Tong Hong v. Siew Wah & Ors. and Mok Deng Chee v. Yap See Hoi & Ors*.

[2] There is no equity arising out of the expenditure of money (for renovation and improvements) by the plaintiffs; any expectation they might have, that they could always remain there was not created or encouraged by R & K.

[3] As there is no relationship of landlord or tenant between the plaintiffs and R & K, the claim for protection under the Control of Rent Act is untenable; as is the claim that R & K are holding the property on a constructive trust for the plaintiffs.

[4] The plaintiffs are bare licencees and their licence has been validly terminated.

[Defendants' application allowed]

Cases referred to:
Inwards v. Baker [1965] 1 All ER 446
Yong Tong Hong v. Siew Wah & Ors. [1971] 2 MLJ 105
Mok Deng Chee v. Yap See Hoi & Ors. [1981] CLJ (Rep) 69

Legislation referred to:
Rules of the High Court 1980, O. 14

For the defendants/applicants - Foong Kai Choong; M/s. Stella Soo & Co. (Counsel for Mahinder Singh Dulku & Co.)
For the plaintiffs/respondents - Abu Haniffa; M/s. Syarikat Abu Haniffa

[Editor's Note: The plaintiffs have lodged an appeal to the Supreme Court on 9 March 1990 *vide* Civil Appeal No: 2-116-90.]

JUDGMENT

Wan Adnan J:

This is an application by the defendants under O. 14 of the Rules of the High Court for the following orders:

(a) For a declaration that the bare licence given to the plaintiffs to remain in the said premises has been validly terminated and that the said plaintiffs occupy the said premises as trespassers;

(b) An order that the plaintiffs be ordered forthwith to vacate premises No. 306-K, Macalister Road, Penang (the said premises) by delivering up peaceable vacant possession of the said premises to the defendants and/or its servants or agents;

In this action the plaintiffs claim for the following orders:

(a) An injunction to restrain the defendants from evicting the plaintiffs from the said premises and transferring the said property;

(b) A declaration that the defendants are holding the said property on trust for the plaintiffs;

(c) A declaration that the plaintiffs are protected tenants of the said premises;

(d) Damages for breach of covenent for quiet enjoyment;

(e) A declaration that the plaintiffs have an equity/equitable interests in the said property;

(f) A declaration that any sale of the said property shall be subject to the tenancy, equity and trust in favour of the plaintiffs;

(g) Costs

(h) Further or other relief

The 1st plaintiff is the widow of one Doraisamy @ Durisamy s/o Nagoo Servai (the deceased) who died in 1982. The 2nd, 3rd, 4th and 5th plaintiffs are the children of the marriage between the 1st plaintiff and the deceased. The defendants are the half-brothers of the 2nd, 3rd, 4th and 5th plaintiffs. The said deceased, the plaintiffs and the defendants had resided together at the premises No. 306-K Macalister Road, Penang situated on lot No. 303 Town Subdivision 4 North East District Penang (the said property) during the lifetime of the deceased. After the death of the deceased the 1st, 2nd and 3rd plaintiffs and the defendants continued to occupy the said property.

By an Indenture of Conveyance dated 25 August 1931 the said property was transferred by the defendants' grandmother to the deceased for the term of his natural life and thereafter unto the defendants as joint-tenants in fee simple. At this date the deceased had not yet married the 1st plaintiff. The deceased died on 2 August 1982. On 10 March 1986 the defendants obtained the order of the Court vesting the said property in the defendants' joint names. The said order was duly registered at the Registry of Land Title Penang on 7 July 1986. Final Title under the National Land Code had been issued to the defendants.

The plaintiffs contend that they have equitable interests in the said property. They say they are protected by proprietary and promissory estoppel. They also say they have a licence coupled with an equity in the said property. In the affidavit affirmed by D. Ganapathy the 2nd plaintiff on 2 November 1989, the 1st, 2nd and 3rd plaintiffs said that they lived with the deceased at the said property and after his death continued to live there in the belief that the deceased was the legal owner of the property and that they had succeeded to it together with the defendants. During the lifetime of the deceased they had the expectation that as his heirs they would inherit part of the said property and had spent money on improving the said property. The deceased did nothing to dispel this belief. The defendants did not inform them that the said property vested in them after the death of the deceased. Over the years they had purchased building materials and engaged workers to carry out repairs, renovation and extension. They had also contributed towards payments of quit rent and assessment. Exhibited to the affidavit as Ex. S2 are a number of bills in respect of materials purchased during the period from 1973 to 1981. The total value was RM1,312. They say that most of the bills were not kept.

In the alternative the 1st, 2nd and 3rd plaintiffs claim that they are tenants protected by the Control of Rent Act and in the further alternative the plaintiffs say that the defendants are holding the said property on a constructive trust for them.

The law on tenancy or licence coupled with an equity was stated in the case of *Inwards v. Baker* [1965] 1 All ER 446. In that case Lord Denning, MR defined the concept as follows:

> It is quite plain from the authorities that if the owner of land requests another or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with equity...that the equity arising from the expectation of land does not fail.... The Court can look at the circumstances and see whether there is any equity arising out of the expenditure of money.

This principle has long been recognised in our law. It became a settled law as a result of the decision of the Federal Court in *Yong Tong Hong v. Siew Wah & Ors.* [1971] 2 MLJ 105 which decision was subsequently confirmed by the Privy Council. It was recently followed and reaffirmed by the Federal Court in *Mok Deng Chee v. Yap See Hoi & Ors.* [1981] CLJ (Rep) 69.

On 25 August 1931 when the said property was transferred to the deceased by the defendants' grandmother the deceased had not yet married the 1st plaintiff. According to the Indenture only life interest was transferred to the deceased. After the death the property was to devolve unto the defendants as joint tenants in fee simple. Later deceased married the 1st plaintiff who bore him the 2nd, 3rd, 4th and 5th plaintiffs. They all lived in the said property. The 1st plaintiff lived in the said property as the wife of the deceased and the 2nd, 3rd, 4th and 5th plaintiffs lived there as the children of the deceased. After the death of the deceased they continued to remain in the said property. After the death of the deceased the defendants in accordance with Indenture became the registered owner of the said property. The plaintiffs and the defendants are occupying separate portions of the said property. First defendant in his affidavit Encl. (10) at para. 7 said:

> ... In respect of the portion of the said property occupied by my brother there is a separate electricity meter and the electricity bill is paid exclusively by my brother, myself and the 2nd and 3rd plaintiffs share the other electricity meter. Water charges are shared by us.

This has not been contradicted by the plaintiffs. The defendants denied that the plaintiff had contributed towards payment of the quit rent and assessment rates. Even if it is true that the plaintiffs had contributed towards the assessment rates and quit rent I find that it is only fair that the plaintiffs make the contributions as the portion of the said property which they occupy is part of the whole property upon which the rent and rates are levied.

As regards the expenditure for the alleged renovation and improvement I find that they were just for minor work which must have become necessary by the plaintiffs' own desire for the comfortable occupation of the portion of the property occupied by them.

Looking at the circumstances of the case I find that there is no equity arising out of the expenditure of money by the plaintiffs. Any expectation they might have that they could always remain there was not created or encouraged by the defendants.

As for the claim for protection under the Control of Rent Act 1966 I find that the claim is untenable. There is no relationship of landlord and tenant between the plaintiffs and the defendants. The plaintiffs' claim that the defendants are holding the said property on a constructive trust for them also has no merit.

I find that there are no triable issues. I find that the plaintiffs are bare licensees and that their licence had been validly terminated. I therefore allowed the defendants' application with costs.

The defendants had made a similar application earlier in Encl. (7). It came up for hearing on 20 October 1989. During the course of the hearing Counsel for the plaintiffs submitted that it was fatal to the application if the affidavit in support of the application did not state "I verily believe that there is no defence to the action". Counsel for the defendants conceded that the failure was fatal and asked for an adjournment to remedy the situation. The application for adjournment was objected to. I dismissed the application with costs.

At the outset of the hearing of this new application Counsel for the plaintiffs raised *res judicata* as a preliminary objection. After hearing both Counsel I overruled the objection. I had not decided the earlier application on the merits. I find that the Court can entertain the second application.

Also found at [1990] 2 CLJ 958